

# State of South Dakota

## EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

616L0473

### HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

### NO. **SB 193** - 02/23/2005

Introduced by: Senators Greenfield, Abdallah, Apa, Bartling, Dempster, Duenwald, Duniphan, Earley, Gant, Gray, Hansen (Tom), Hanson (Gary), Kooistra, Koskan, Lintz, McCracken, McNenny, Moore, Napoli, Peterson (Jim), Schoenbeck, Smidt, Sutton (Duane), and Two Bulls and Representatives Weems, Brunner, Buckingham, Davis, Deadrick, Dykstra, Frost, Fryslie, Garnos, Glenski, Hackl, Hargens, Howie, Hunt, Jensen, Jerke, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, Miles, Nelson, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Street, Tornow, Van Etten, and Wick

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the performance of  
2 abortions on unemancipated minors and those found to be incompetent.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-23A-7 be amended to read as follows:

5 34-23A-7. No abortion may be performed upon an unemancipated minor or upon a female  
6 for whom a guardian has been appointed because of a finding of incompetency, until at least  
7 forty-eight hours after written notice of the pending operation has been delivered in the manner  
8 specified in this section. The notice shall be addressed to the parent at the usual place of abode  
9 of the parent and delivered personally to the parent by the physician or an agent. In lieu of such  
10 delivery, notice may be made by certified mail addressed to the parent at the usual place of  
11 abode of the parent with return receipt requested and restricted delivery to the addressee, which



1 means a postal employee can only deliver the mail to the authorized addressee. If notice is made  
2 by certified mail, the time of delivery shall be deemed to occur at twelve noon on the next day  
3 on which regular mail delivery takes place, subsequent to mailing.

4 No notice is required under this section if:

5 (1) The attending physician certifies in the ~~pregnant~~ unemancipated minor's or the  
6 incompetent female's medical record that, on the basis of the physician's good faith  
7 clinical judgment, a medical emergency exists that so complicates the medical  
8 condition of a ~~pregnant~~ the unemancipated minor or the incompetent female as to  
9 necessitate the immediate abortion of her pregnancy to avert her death or for which  
10 a delay will create serious risk of substantial and irreversible impairment of a major  
11 bodily function and there is insufficient time to provide the required notice. Unless  
12 the unemancipated minor or incompetent female gives notice of her intent to seek a  
13 judicial waiver, the parent shall be verbally informed by the attending physician or  
14 the physician's agent as soon as possible, but not later than twenty-four hours after  
15 the performance of the emergency abortion, that an emergency abortion was  
16 performed on the unemancipated minor or incompetent female and shall also be sent  
17 a written notice, in the manner described in this section, of the performed emergency  
18 abortion. If the unemancipated minor or the incompetent female, upon whom an  
19 emergency abortion was performed, elects not to allow the notification of her parent,  
20 any judge of a circuit court shall, upon petition, or motion, and after an appropriate  
21 hearing, authorize the waiving of the required notice of the performed abortion if the  
22 judge determines, by clear and convincing evidence that the unemancipated minor  
23 or incompetent female is mature and capable of determining whether notification  
24 should be given, or that the waiver would be in the unemancipated minor's or the

1 incompetent female's best interest; or

2 (2) The person who is entitled to notice certifies in writing that ~~he~~ the person has been  
3 notified. The certification is valid only if the signature has been notarized. If the  
4 person does not provide a notarized signature, the person shall be sent a written  
5 notice as described in this section. No abortion as described in this section may be  
6 performed until at least forty-eight hours after written notice of the pending operation  
7 has been delivered in the manner specified in this section; or

8 (3) ~~A pregnant~~ An unemancipated minor or incompetent female elects not to allow the  
9 notification of her parent ~~or guardian or conservator~~, in which case, any judge of a  
10 circuit court shall, upon petition, or motion, and after an appropriate hearing,  
11 authorize a physician to perform the abortion if the judge determines, by clear and  
12 convincing evidence, that the ~~pregnant~~ unemancipated minor or incompetent female  
13 is mature and capable of giving informed consent to the proposed abortion. If the  
14 judge determines that the ~~pregnant~~ unemancipated minor or incompetent female is  
15 not mature, or if ~~the pregnant female~~ she does not claim to be mature, the judge shall  
16 determine, by clear and convincing evidence, whether the performance of an abortion  
17 upon her without notification of her parent, ~~guardian, or conservator~~ would be in her  
18 best interests and shall authorize a physician to perform the abortion without such  
19 notification if the judge concludes that ~~the pregnant female's~~ her best interests would  
20 be served thereby.

21 Section 2. That § 34-23A-7.1 be amended to read as follows:

22 34-23A-7.1. In any proceeding pursuant to subdivision 34-23A-7(1) or 34-23A-7(3), the  
23 ~~pregnant~~ unemancipated minor or incompetent female may participate in proceedings in the  
24 court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall,

1 however, advise her that she has a right to court-appointed counsel and shall, upon her request,  
2 provide her with such counsel. Proceedings in the court under ~~this~~ subdivision 34-23A-7(1) or  
3 34-23A-7(3) shall be confidential and shall be given such precedence over other pending matters  
4 so that the court may reach a decision promptly and without delay so as to serve the best  
5 interests of the ~~pregnant~~ unemancipated minor or incompetent female. A judge of the court who  
6 conducts proceedings under ~~this~~ subdivision 34-23A-7(1) or 34-23A-7(3) shall make in writing  
7 specific factual findings and legal conclusions supporting the decision and shall order a record  
8 of the evidence to be maintained including the judge's own findings and conclusions.

9 An expedited confidential appeal shall be available to any such ~~pregnant~~ unemancipated  
10 minor or incompetent female for whom the court denies an order authorizing an abortion  
11 without notification. An order authorizing an abortion without notification is not subject to  
12 appeal. No filing fees are required of any such ~~pregnant~~ unemancipated minor or incompetent  
13 female at either the trial or the appellate level. Access to the trial court for the purposes of such  
14 a petition or motion, and access to the appellate courts for purposes of making an appeal from  
15 denial of the same, shall be afforded such ~~a pregnant woman~~ an unemancipated minor or  
16 incompetent female twenty-four hours a day, seven days a week. Notwithstanding any other  
17 provision of law, all pleadings, papers, and other documents filed pursuant to this section are  
18 confidential, are not public records, and are not open for inspection by any member of the public  
19 for any purpose.

20 Section 3. That subdivision (4) of § 34-23A-1 be amended to read as follows:

21 (4) "Parent," one parent or guardian of the pregnant minor or the guardian or conservator  
22 of the pregnant female;  
23